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08/951,276	10/16/1997	DAVID G. MCCARTHY	402-038-19	1410
7590 Mark P. Stone Attorney at Law 50 Broadway Hawthorne, NY 10532			EXAMINER HAMMOND, BRIGGITTE R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID G. McCARTHY

Appeal 2009-009298
Application 08/951,276¹
Technology Center 2800

Decided: October 28, 2009

Before LEE E. BARRETT, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final rejection of claims 6, 19, and 20. Claims 1-5 and 7-18 have been canceled. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We reverse.

¹ Filed October 16, 1997, titled "Retractable Receptacle for Furniture."

STATEMENT OF THE CASE

Prior decisions

A first prior decision was entered by this panel in Appeal 2001-0076 on October 31, 2002, in which we reversed the examiner's rejection under 35 U.S.C. § 112, first paragraph, for lack of written description.

A second prior decision was entered in Appeal 2006-0159 on April 19, 2006, in which we affirmed-in-part obviousness rejections under 35 U.S.C. § 103(a).

The invention

The invention relates to a retractable receptacle for electronic or communications equipment mounted in a furniture unit, such as office conference tables. The receptacle unit is selectively displaceable between a retracted position in which the top of the receptacle unit is planar with the top of the article of furniture and an extended position in which the receptacle is elevated above the top surface of the article of furniture. A means resiliently biases the receptacle unit into its extended position and a releasable locking means opposes the means for resiliently biasing when the receptacle unit is in its retracted position.

The claims

Claim 6 is reproduced below with the limitations at issue underlined:

6. An article of furniture having a top surface and an opening defined in said top surface; the improvement comprising a receptacle unit adapted to be mounted in said opening in said top surface of said article of furniture; said receptacle unit comprising a

top and at least one sidewall extending downwardly from said top, said at least one sidewall having at least one receptacle defined therein; and means for selectively displacing said receptacle unit between a retracted position in which said top of said receptacle unit is planar with said top surface of said article of furniture, and an extended position in which said at least one receptacle in said at least one sidewall of said receptacle unit is elevated above the top surface of said article of furniture,

said improvement further including means for resiliently biasing said receptacle unit into said extended position, and cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position. [Emphasis added.]

The references

Cole	3,646,244	Feb. 29, 1972
Byrne	4,747,788	May 31, 1988

The rejection

Claims 6, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Cole and Byrne.

CONTENTIONS

The Examiner finds that Cole describes the retractable receptacle of claims 6 and 19 except for the receptacle being mounted in an article of furniture. In particular, the Examiner finds that spring supported stops 45a and 45b in Cole correspond to the claimed "means for resiliently biasing said receptacle unit into said extended position" and that the flange 27 of the trim

ring 37 corresponds to the claimed "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position." The Examiner finds that Byrne describes a retractable receptacle in an article of furniture and would have suggested to one of ordinary skill in the art mounting the receptacle of Cole in an article of furniture. Final Rej. 2-3.

Appellant argues that Cole does not describe "means for resiliently biasing said receptacle unit into said extended position" because the housing 10 is moved manually from its recessed position into its extended position by a lifting handle. It is argued that spring supported stops 45a and 45b in Cole do not urge the housing into its extended position, but retain the housing in its extended position relative to the casing only after the housing has been fully lifted a predetermined distance above the casing. Br. 10-11.

The Examiner responds that if the elements "45a, 45b were not biasing the receptacle into the extended position, the receptacle would fall back into the non-extended position." Ans. 5.

Appellant replies that "[i]f the elements 45a and 45b were provided to resiliently bias the receptacle into its extended position, it would not be necessary for the receptacle unit 10 to be 'manually pulled upward' into its extended position." Reply Br. 3. It is also argued that "the stops 45a, 45b do not exert a resilient bias or or [sic, on] the receptacle in a direction of its extended position. On the contrary, the stops 45a, 45b exert a force in a different direction (laterally relative to the receptacle) and not upwardly relative to the receptacle to bias it in its extended position." *Id.*

Appellant also argues that Cole does not describe "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position" because flange 27 of trim ring 37 cooperates with the stops 45a and 45b to retain the housing in its extended position after the housing is manually lifted from the casing and does not maintain the housing in the casing opposing a resilient bias in the retracted position. Br. 12-13.

The Examiner responds that elements 27, 37 are able to be released and are releasable locking means. Ans. 5.

Appellant replies that elements 27, 37 "do not provide releasable locking means for maintaining the receptacle in its retracted position until the locking means are released and the resilient bias overcomes the force of the locking means." Reply Br. 5.

Appellant notes that although not addressed in the Final Action, neither spring 54 which acts upon latch member 55, or spring 60 which is disposed around the bolt 51 provides means for resiliently biasing the housing 10 into its extended position relative to casing 16. Br. 13-14.

ISSUE

Has Appellant shown that the Examiner erred in finding that Cole describes "means for resiliently biasing said receptacle unit into said extended position" and "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position" as recited in independent claims 6 and 19?

FACTS

Cole describes a retractable housing 10 mounted within a stationary casing 16 in the floor. The housing mounts receptacles 16. The housing may be manually moved between a position where the housing is hidden and the top of the housing is flush with the level of the floor and an extended (withdrawn) position where the receptacles are accessible. Col. 4, ll. 7-19.

The housing 10 is held in its withdrawn position by a pair of spring supported stops 45a and 45b which rest against the upper surface of flange 27. Col. 4, ll. 20-34.

A cap 50 forms the head of a bolt 51. When released, a spring 54 urges the bolt 51 to an upward position (Fig. 4) where it can be gripped and used as a handle to pull the housing to its extended position. Col. 4, l. 73 to col. 5, l. 17. The cap can be forced down against the spring and rotated to lock the screw and housing into the retracted position. Col. 4, ll. 35-72.

ANALYSIS

The issue concerns only the teachings of Cole.

The Examiner does not dispute that the receptacle unit in Cole is manually pulled upward into its extended position and is not biased upward into the extended position by a resilient means or structure, such as a spring, as in the disclosed invention. We assume that the Examiner understands that the disclosed invention includes a spring or similar device to push the receptacle unit from its retracted position into its extended position, but interprets "means for resiliently biasing said receptacle unit into said

extended position" to read in an unintended manner on the different structure in Cole. It would have been helpful if the Examiner had explained how the claim language was being interpreted. The Examiner does not explain how locking the receptacle unit in the extended position by the stops 45a and 45b, which are resiliently biased by a spring supports 43a and 43b, meets the limitation of "biasing said receptacle unit into said extended position."

The word "into" is defined as: "1 -- used as a function word to indicate entry, introduction, insertion, or inclusion <came ~ the house> 2 a : to the state, condition, or form of <got ~ trouble> . . . 4 : in the direction of <looking ~ the sun>." *Webster's New Collegiate Dictionary* (G.&C. Merriam Co. 1977). Definitions 1 and 2 are the most appropriate. We interpret "means for resiliently biasing said receptacle unit into said extended position" to require some structure resiliently forcing the receptacle unit to the extended position or putting the receptacle unit in the extended position state. The spring supported stops 45a and 45b do not bias the receptacle unit towards the extended position or put the receptacle unit into the extended position, but only lock the receptacle unit in the extended position once it has been manually put in that position. We agree with Appellant the stops are biased in the lateral direction and not toward the extended position. If the claim language said "means for resiliently biasing said receptacle unit in said extended position," instead of "into," the Examiner would have a point, but this is not the claim language. Cole does not suggest that the receptacle unit is moved into the extended position in any other way than by hand. A human cannot constitute a "means." *Default*

Proof Credit Card System, Inc. v. Home Depot U.S.A., Inc., 412 F.3d 1291, 1300 (Fed. Cir. 2005) (citing *In re Prater*, 415 F.2d 1393, 1398 (CCPA 1969)). In any case, a human would not produce a resilient bias. We find that Cole does not describe "means for resiliently biasing said receptacle unit into said extended position."

In addition, we agree with Appellant that Cole does not describe "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position." The flange 27 of trim ring 37 cooperates with the stops 45a and 45b to retain the receptacle housing in its extended position after the housing is manually lifted from the casing and does not maintain the housing in the casing opposing a resilient bias in the retracted position. The rejection fails to appreciate this difference. Cole does not describe "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position."

The principle of using a means for resiliently biasing something into an extended position and using a releasable locking means for opposing the means for resiliently biasing for retaining the something in the retracted position was well known. For example, spring 54 in Cole resiliently biases the cap 50 on the head of a bolt 51 to an extended position. Col. 4, ll. 44-47. A latch member 55 releasable locks the cap 50 in the retracted position against the force of spring 54. Col. 4, ll. 56-72. Nevertheless, this does not teach biasing the receptacle unit and the rejection is not based on modifying Cole in view of this teaching.

CONCLUSION

Appellant has shown that the Examiner erred in finding that Cole describes "means for resiliently biasing said receptacle unit into said extended position" and "cooperating releasable locking means for opposing said means for resiliently biasing for retaining said receptacle unit in said retracted position" as recited in independent claims 6 and 19. Accordingly, the rejection of independent claims 6 and 19 and dependent claim 20 is reversed.

REVERSED

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